

May 21, 1981

CONGRESSIONAL RECORD—Extensions of Remarks

of the limitations of those experiments are becoming sharply visible and the process of reassessment is in train.

Those instruments of social control and income redistribution depended very heavily on the law and the adoption and enforcement of rules—rather than incentives. As history exposed some of the limitations and excesses inherent in government by prescription, Americans began to lose respect for the rules and the people who wrote and enforced them.

The debates about the efficacy of price controls in dealing with inflation are a microcosm of this development. If the evil of inflation is excessive price increases, there is a compelling directness in saying that we can stop inflation by commanding prices to stand still. Quite apart from the fact that price controls do not deal with the underlying reasons for inflation, and thus are of only limited usefulness, price decisions are made by millions of people every day. Although the system always begins with promises to keep it "limited and sensible," conventional considerations of uniformity and equity produce powerful forces to extend controls to as many of those price decisions as possible. The system is drawn inexorably to seeking to control more and more transactions until it reaches the price of paper clips in the corner stationery store. The result can only be contempt for the law and for the people who insist upon rules that reach down into the details of everyday life.

I trust that this experience is running its course, and that the legal profession will have the ability to step back and consider with clear eyes some of the infirmities of the old ways of dealing with social and economic issues. There is a critical role for lawyers to play in the creation of new approaches and the design of new institutions, for the underlying social problems will not disappear.

I can think of no better example of this role than an article written last year for *Foreign Affairs* by Lloyd Cutler, a distinguished Washington lawyer who was serving as the President's Counsel. He focussed on the sharp limitations on Presidential leadership created by our constitutional system of checks and balances. Instead of suggesting a radical change to a parliamentary system—which would be quite unworkable in this country—he proposed some far more modest changes to tie the political fortunes of legislators more closely to those of the President. It was, in my mind, a classic example of the lawyer's public role in America.

The second reason for some loss of the respect the legal profession enjoys is both more fundamental and more within the control of individual lawyers. It reflects a diminished institutional identity of lawyers as members of an ancient and noble profession as opposed to a service business whose sole function is to serve the interests of clients. It represents the carrying to a debilitating extreme of the principle that a lawyer's primary duty is to his client, and that both inside the courtroom and around the conference table, a lawyer's job is to represent his client's interests within the restrictions of the law and the Code of Professional Responsibility. That conventional wisdom is true, but not the whole truth. No person can live a worthy life and observe only the written rules. No professional can represent the best in his profession and be governed only by the Code of Professional Responsibility.

There has been much confusion in recent years about the ethical problems which face lawyers. For many, that question has become one of the propriety of a lawyer's bending his talents to serve a client of

whose business or practices the lawyer disapproves: for example, a company that pollutes the environment or does business with authoritarian regimes in other countries. You may view this as splitting hairs, but while I recognize the legitimacy of those questions, they strike me as issues that are common to all men and do not arise out of the lawyer's special role. They simply ask the question, "Do I want to be associated with this kind of a person or company?"

There are, however, a unique set of ethical problems which lawyers face every day. They can be summed up with the question, "how far do I pursue the interests of my client?"

That is a question that becomes more difficult as the lawyers come increasingly to view their responsibilities as congruent with their clients' interests. There are structural changes occurring in the bar that increase that sense of identity of interests. The enormous growth of corporate law offices deepens the identification between corporate counsel and their employer-client. The very size and scope of the largest law firms creates institutional imperatives for management techniques and business-like behavior that, in a subtle way, alters the lawyer's self-image.

The question of a lawyer's standards is involved in a hundred small ways countless times each month:

Is it appropriate to try to impeach a witness whose testimony you know to be true?

Is it proper to use the discovery system to drag out a litigation because time redounds to the benefit of your client?

How far do you push an ambiguity in the tax law in claiming favorable tax treatment in a system that depends upon voluntary compliance?

In making a difficult judgement about the materiality of unfavorable information that has not yet been disclosed to the securities markets, how much weight do you give to your client's desire to remain silent?

Before adoption of the Foreign Corrupt Practices Act, what should you have done upon discovery that your client is bribing foreign government officials, in violation of their law?

I could multiply the examples, but the nature of the problem is very clear. On the one hand, it is not appropriate for you to substitute your ethical judgment for that of your client. But you are clearly a participant in the judgment your client makes. And you are the primary actor in the legal judgment. The law is necessarily broad, and if you interpret your mandate as pressing that vagueness as far as it will go in the interests of your client, then the sum total of all your efforts will not be worthy of this great profession. Your professional life will be best characterized by having achieved the lowest common denominator.

Nor will you earn the respect of your clients. Whatever their desire to come out on top in a particular litigation or negotiation, they will not think much of a legal system that appears capable of being bent in a way that defeats its own objectives. It is here that a lawyer's relationship with his client is most subtle and important. A businessman who asks for an opinion that a proposed course of conduct is legal is doing more than seeking protection from a later claim that he engaged in it knowing it to be wrong. No matter how aggressively he deals with his lawyer, he is ordinarily seeking independence of judgment as well as analytical skill in thinking up "arguments" that can be made to justify the proposal.

Moreover, losing your independence is not in the best interests of your client. A tax lawyer who influenced heavily my early years as a lawyer always counselled his cli-

ents about the dangers of "putting both feet in the trough." Harold Williams made the same point more formally when he said that "conduct which is fashioned to comply only nominally with the law merely invites, if the public's expectations are breached, more detailed and prescriptive law and regulation describing what is, and what is not, permissible behavior."

When all is said and done, however, more is involved than the interests of your client. The decision on each of these small issues, in total, represents the success or failure of our legal system.●

ALAMEDA MEALS ON WHEELS

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 21, 1981

● Mr. STARK. Mr. Speaker, on January 28, 1981, I submitted for publication in the *CONGRESSIONAL RECORD* an article on a very special project in my district, known as Meals on Wheels. Meals on Wheels provides hot meals for senior citizens in Alameda County. These meals are delivered to the homes of the recipients, and the program is staffed by an entirely volunteer staff.

I want to take this opportunity to express my thanks to Abe Koffman for his unending support of this wonderful program. Mr. Koffman is the editor of the *Alameda Times Star* and has been a supporter of Meals on Wheels from the beginning. Through his column he generated approximately \$18,000 in contributions in 1980, and as of April 30 of this year, contributions have reached \$3,400.

I want to express again my support for this invaluable program and my thanks to all those who help make it possible. I take great pride in knowing that the people of Alameda really care.●

TRAGIC SITUATION IN EAST TIMOR

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 21, 1981

● Mr. EDWARDS of California. Mr. Speaker, several recent press articles regarding the tragic situation in the former Portuguese colony of East Timor are of particular cause for concern, and I would like to commend them to my colleagues' attention.

These articles, however, are not from the American press, but from the Indonesian press, including an army newspaper. They describe massive military maneuvers carried out in East Timor in late March by over 10,000 troops. These exercises included simulated bombing attacks with American equipment notably Rockwell OV-10 "Bronco" counterinsurgency aircraft.

While the Indonesian press articles contain no evidence that the military exercises have extended to actual military operations against Timorese nationalists who are resisting the illegal Indonesian occupation of their homeland, I find it significant that the exercises were carried out in areas where nationalist resistance is reported to be heaviest.

Should Indonesian military operations be taking place at this time—as refugees assert they are—they should be condemned in the strongest possible terms. The Indonesians invaded East Timor 5 years ago and remain there today in violation of international law. Indeed, whether or not they culminated in combat operations, the March military maneuvers are in themselves a further violation of East Timor's territorial integrity and in contravention of United Nations resolutions on the issue. It is regrettable that U.S. policy, which stands firm against aggression in Cambodia and Afghanistan and the Soviet threat to Poland, continues to acquiesce in Indonesia's brutal occupation of East Timor.

The human costs of the Indonesian occupation should be made clear. American press reports give an East Timorese death toll of up to 200,000 out of a population of 650,000. Last October, before the United Nations, Amnesty International described reports of large scale summary executions of surrendered Timorese guerrillas—who are entitled to humane treatment under the terms of the Geneva Conventions—and the "disappearance" of those whose only "crime" was peaceful opposition to the Indonesian occupation. Reports from recent refugees state that the violence is far from over, that thousands of Timorese have been imprisoned on nearby islands. Thus far, the International Committee of the Red Cross (ICRC) has not had access to these or any other East Timor prisons.

It is clear that an equitable political solution that provides the East Timorese with their internationally recognized right to self-determination is the only long-term solution to this tragic situation. I would like to associate myself with comments on this subject by Senator PAUL TSONGAS in a recent letter to the New York Times Magazine.

A recent article in the Australian press provides further information on the role of Portugal, which is still recognized by the United Nations as the legal sovereign of East Timor. The Portuguese Government has reportedly asked United Nations Secretary General Waldheim to form a special commission to study the East Timor question. It is possible that such a commission could eventually provide a framework for a just diplomatic settlement. As such, it deserves our full support.

[From Kompas, Mar. 28, 1981]

EXCERPTS FROM ARTICLE

The exercises involved more than 10,000 troops, 90 percent of them young graduates from military school.

Operations were also conducted in Blak (West Irian) and Maluku. The whole program of exercises will finish on April 1, 1981.

New FNC weapons will replace the M-16 weapons currently used by the special units. Modern French made AMX tanks, of greater capacity and range, will replace the obsolete Russian tanks now in service.

The exercises were followed by a meeting of Armed Forces heads in Ambon.

[From KOMPAS, Mar. 26, 1981]

ARMED FORCES JOINT EXERCISES 1981

Wednesday was the first day of the Armed Force Joint Exercises 1981 held in Baucau and Los Palos. In Baucau the exercises took the form of an assault on enemy occupied Baucau using airborne Kopassandha units dropped from helicopters in the wake of a rocket bombardment by counter-insurgency OV-10 "Broncos". After the seizure of Baucau, further exercises were undertaken by Kopasgat troops landed from the air. In Los Palos, exercises were carried out by airborne Kostrad troops. At 8:00 a.m. one battalion was dropped simultaneously from eight Hercules aircraft backed up by counter-insurgency OV-10 "Broncos" pouring in fire-power for "mopping-up" purposes. Today, Thursday, the exercises will take the form of amphibious landings in Laga, also in East Timor. The picture shows troops being dropped during the airborne operation at Los Palos.

[Newspaper of Indonesian Army, AB, Mar. 26, 1981]

THE RE-OCCUPATION OF BAUCAU EAST TIMOR

BAUCAU, Wednesday.—At dawn on Wednesday, March 25, the Armed Forces Joint Exercises '81 were launched with an attack on Baucau which for the purposes was considered occupied by the enemy. The event was witnessed by the Minister for Defence and Armed Forces Commander, M. Jusuf accompanied by observers comprising senior officials of Hankam, Pangkajene, members of Parliament, the local Governor, editors, PWI, journalists, the Head of Dharma Pertiwi, Mrs E. Jusuf, and other Armed Forces leaders. The attack on Baucau was carried out by an airborne invasion of a Paracommando unit dropped by helicopter following a rocket bombardment on the target below by counter-insurgency OV-10, "Broncos" which continued to provide air cover. Meanwhile Karsa Yudha conducted an offensive smashing enemy positions around Baucau with a view to preparing an area for an airborne landing. In a short time Baucau was secured and the Indonesian flag successfully hoisted in place of the enemy flag. After the capture of Baucau a 'rapid-strike' company flow in from Dili conducted an airborne landing to occupy positions around Baucau. During the morning airborne battalion 502 also landed following an air strike into the paratroopers landing target. After the successful capture of the target area, forward enemy positions around Los Palos were smashed. Los Palos was successfully seized and occupied. An operation designed to coordinate Sandhi Yudha troops and the local territorial apparatus followed resulting in the formation of the Udara Tahap I base.

The Armed Forces Joint Exercises '81 covered two-thirds of the country and served to evaluate the Minister of Defence's policy of forming a strong, preventative force.

The Armed Forces Joint Exercises '81 provided a means of measuring the capacity,

skills and integrity of troops as well as testing the supply of equipment and new Armed Forces weapons.

Today, Thursday, the Armed Forces Joint Exercises '81 will be continued with amphibious landings in Laga, East Timor.

[From the New York Times Magazine, Mar. 15, 1981]

TRAGEDY OF EAST TIMOR

As one member of Congress who has long been concerned with the tremendous suffering that has occurred in East Timor, I found Henry Kamm's article "The Silent Suffering of East Timor" (Feb. 15) a fine essay on this sadly overlooked situation. Mr. Kamm has provided us all with needed information on this subject. But, however difficult the situation many now appear, it would compound this tragedy for the world to accept Indonesia's annexation of East Timor as final. As The New York Times has pointed out in its editorials on East Timor, a diplomatic solution to end the unwanted Indonesian occupation is still a possibility. In the interest of preserving American ideals and the rule of law in international affairs, the United States should lend its weight to such an effort.

PAUL E. TSONGAS,
U.S. Senator,

Committee on Foreign Relations.

STATEMENT OF BEHALF OF AMNESTY INTERNATIONAL TO THE FOURTH COMMITTEE OF THE 35TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY IN CONNECTION WITH THE QUESTION OF EAST TIMOR

On behalf of Amnesty International, I thank you for the opportunity to appear before you in connection with the question of East Timor.

I would like to draw to your attention at the outset that Amnesty International's mandate is specific. It seeks the release of "Prisoners of Conscience"—persons who have been imprisoned for the non-violent exercise of their beliefs, for their ethnic origin, colour, sex, language or religion. It works for fair and early trials for all political prisoners detained without charge or trial. It opposes without reservation the death penalty and torture or other cruel, inhuman or degrading treatment or punishment. These are the areas that are addressed in this statement in the belief they are relevant to your present consideration of the question of East Timor.

Since December 1975, after the Indonesian invasion, there have been persistent reports of violations of human rights in East Timor relating to imprisonment and execution without trial of both civilians and former combatants. Amnesty International has encountered considerable difficulty in establishing their veracity primarily because of a strict prohibition imposed by the Indonesian occupation forces which has prevented unhindered access to the territory and the free flow of information out of it.

However, on the basis of what it considers to be reliable reports received in recent months, Amnesty International is particularly concerned about:

Timorese who, having surrendered under the terms of an amnesty guaranteeing their personal safety or who were captured, have subsequently disappeared without trace;

Summary executions of persons who have surrendered to or been captured by Indonesian forces;

The large number of persons who have been held in prisons without trial since the invasion and who, as they took no part in the fighting, must be regarded as political prisoners and, in some cases, as Prisoners of

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Conscience since they neither used nor advocated violence;

Harsh prison conditions which constitute cruel, inhuman and degrading treatment or punishment.

In August 1977, President Suharto offered an amnesty to all "Fretilin remnants" who surrendered to Indonesian forces. The offer initially ran until 31 December 1977, but was renewed. In the past three years, and particularly since mid-1978, large numbers of East Timorese have surrendered, including a number of Fretilin leaders and fighters. Others during this same period were captured. Amnesty International is gravely concerned about the safety of these persons.

During 1979, there were a number of reports of persons "disappearing" after surrender or capture by Indonesian forces. Their present whereabouts remain unknown and there are fears they may have been executed. In February 1980, Amnesty International compiled a list of 22 such individuals. Some were reportedly killed immediately after surrender, but most simply "disappeared", either while in detention or, in some cases, after release. These persons were taken from their places of detention or picked up from their homes and have not been seen since. For example, in early 1978 Leopoldo Joaquim, a member of the Fretilin Central Committee, surrendered, was detained for several months and upon release was required to report daily to the local military command. In April 1979 he was escorted to the house of his niece Maria Gorete Joaquim. Both were taken away, purportedly to Baucau. Neither has been seen or traced since. In March 1979, Dulce Maria da Cruz, who was also a member of the Fretilin Central Committee, was captured with her three year old child. She was taken to Dili and detained. Nothing has been heard of her since.

Amnesty International has urged a full investigation into the present whereabouts of these as well as of others said to have "disappeared" after surrender or capture. To its knowledge this has not been done. Amnesty International continues to receive reports of new cases. It is not, however, in a position to estimate the total number of "disappearances" in East Timor in view of the obstacles to gaining access to the true situation.

In some situations the dividing line between "disappearance" and murder or execution is slender and this apparently is true of the situation in East Timor.

Reports received by Amnesty International in 1979 and in 1980, the most recent being August 1980, allege large scale summary executions of persons who surrendered under the terms of the amnesty or were captured. Furthermore, there are allegations that persons who surrendered four years ago are now being executed for having assisted Fretilin. Reports also indicate that the East Timorese in general have been victims of reprisals, interrogation and arbitrary imprisonment. Amnesty International has also received reports of beatings of prisoners and persistent allegations of the use of torture to gain information.

According to information received by Amnesty International, Comarca prison, which in Portuguese times was the Dili district prison, holds the largest number of those detained by the Indonesian forces for alleged pro-Fretilin sympathies. At the end of 1979, approximately 700 East Timorese were detained there. Conditions in the Comarca are believed to be harsh. A person who visited the prison late last year reports it was overcrowded and many prisoners appeared to be seriously under-nourished, their basic diet consisting of rice and kankung. In addition to malnutrition, tuberculosis is rampant in the prison. Prisoners are forced to

sleep in close proximity one to another on stone floors. Adjacent to the prison is a swamp which seeps into the lower cells aggravating physical and health conditions.

Mr. Chairman, disturbed by continuing reports of the grave violations referred to here, Amnesty International in April 1980 wrote to President Suharto to draw his attention to these concerns. In its letter, Amnesty International:

i. Urged the Indonesian government to carry out its own investigation into the present whereabouts of persons who had "disappeared" after surrender or capture;

ii. Appealed to the Indonesian government to co-operate in ensuring the International Committee of the Red Cross be permitted to expand its activities in East Timor beyond the provision of relief so as to include its other internationally-recognized functions of tracing missing persons and visiting prisons;

iii. Requested President Suharto to instruct Indonesian forces in the territory of East Timor to ensure the physical safety of former Fretilin supporters in compliance with the terms of the amnesty originally offered by the President;

iv. Urged an investigation into the conditions in which several hundred East Timorese are being imprisoned; and asked for public assurance that prisoners would be treated in accordance with international standards governing the rights of persons held in detention.

In the light of the information Amnesty International had received, it considered such steps to be the minimum required. The minimum standards for the treatment of prisoners as set forth in the Geneva Conventions of 1949 governing areas of armed conflict prohibit torture and murder. According to internationally-recognized principles of law, all persons alleged to have committed crimes are to be treated, judged and punished within a framework of legality which is consistent with respect for and protection of human rights.

No reply to this letter has been received to date by Amnesty International, nor has there been any evidence that the steps urged on the Indonesian government have been implemented. In view of the lack of assurance from the government that these findings would be investigated; and in view of the reports of violations that continue to be received, Amnesty International's concern has intensified. Accordingly, Amnesty International felt this Committee should be and would wish to be informed of its concerns in connection with its present consideration of the question of East Timor.

[From Melbourne Age, Apr. 28, 1981]

NEW TIMOR MOVE

LISBON, April 27.—Portugal is to make a new bid to resolve the problem of East Timor. The Government has asked the United Nations Secretary-General, Dr. Waldheim, to form a special commission to examine the question, and has invited him to discuss the move in Portugal next month, according to reliable diplomatic sources.

The initiative follows the breakdown of a proposal made last year by then Prime Minister Francisco Sa Carneiro, killed in December in an air crash, to involve Indonesia in talks on East Timor. The territory has remained under military occupation since 1975 despite UN resolutions calling on Indonesia to withdraw. Sporadic resistance is continuing from Fretilin guerrilla forces, according to Timor refugees arriving in Portugal.

The Leftist weekly, "Jornal", also citing diplomatic sources, said Dr. Waldheim had

already accepted the Portuguese invitation and was expected in Lisbon in the first fortnight of May.

Last September Dr. Sa Carneiro proposed talks between "all interested parties" over the future of Timor. These were specified as Portugal, Indonesia, Australia, the ASEAN countries, the United States, Japan, EEC countries and Portugal's former African colonies. Indonesia never officially responded, and Portugal failed to win support from any senior Western nation.●

THE WORLD GATHERING OF JEWISH HOLOCAUST SURVIVORS

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 21, 1981

● Mr. WAXMAN. Mr. Speaker, the world gathering of Jewish holocaust survivors will be held in Israel from June 14 to 18, 1981. More than 300 representatives from southern California, survivors and children of survivors, plan to attend.

Irving Peters of Beverly Hills is chairman of the southern California committee for the world gathering. He is founder and president since its inception of the Southern California Council of Jewish Survivors of the Nazi holocaust, a member of the national executive committee and of the international steering committee for the world gathering. He is a survivor of slave labor camps, was a member of Jewish community councils in displaced persons camps, and lived through the days of the Berlin blockade.

The world gathering is a dramatic testimonial to the survival of the Jewish people through centuries of imprisonment, slavery and genocide. The southern California delegation will join thousands of others from around the world and 5,000 now living in Israel, to represent the 6 million who perished in the Nazi holocaust. The world gathering is dedicated to the causes of freedom and liberty. The year 1981 marks 36 years of freedom since the liberation of the Nazi concentration camps. It is the "double chai" anniversary—meaning "double life." "Chai" is 18 in the Hebrew language and means "life" in the Jewish tradition.

In these days, when we are again having to fight terrorism, prejudices of many kinds, and even attempts on the part of pseudohistorical groups to rewrite history, to claim that the holocaust never existed, we must recognize that attacks on any of us are attacks on all of us. The preservation of human liberty is an unending struggle which involves everyone.

I ask my fellow members to join with me in observing the occasion of the world gathering of Jewish holocaust survivors and in pledging our unceasing dedication to the struggle